

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNYL CALUGAS,

Plaintiff,

vs.

PATENAUDE & FELIX, APC, a
California Corporation; and MATTHEW
CHEUNG, and individual,

Defendants.

NO. 2:15-cv-01332-RAJ

ORDER

PATENAUDE & FELIX, APC,

Third-Party Plaintiff,

vs.

LAW OFFICES OF ANTOINETTE M.
DAVIS, PLLC,

Third-Party

Defendant.

This matter comes before the Court upon Third-Party Defendant Law Offices of Antoinette M. Davis, PLLC's ("Davis") motion to dismiss Third-Party Plaintiff Patenaude & Felix, APC's ("P&F") third-party complaint under Federal Rule of Civil

1 Procedure 12(b)(6). Dkt. # 25. The Court has already dismissed Plaintiff Jennyl
2 Calugas's claims against P&F and Mr. Cheung. Dkt. # 48. For the reasons stated
3 below, the Court declines subject matter jurisdiction over the remaining third-party
4 complaint. This Order operates to dismiss the action, thereby terminating the pending
5 motion to dismiss. Dkt. # 25.

6 **I. BACKGROUND**

7 Ms. Calugas initially brought suit against P&F and Matthew Cheung for
8 violations of the Fair Debt Collection Practices Act, Washington's Consumer Protection
9 Act, and the Washington Collection Agency Act. Dkt. # 8 (Amended Complaint). She
10 chose the federal forum on account of Section 1331 in Title 28 of the United States
11 Code, which allows plaintiffs to bring suit based on actions that arise under "the
12 Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

13 As a result of this lawsuit, P&F sued Davis in a third-party complaint for
14 violations of Washington's Consumer Protection Act. Dkt. # 14. P&F alleged subject
15 matter jurisdiction arising out of Section 1367 in Title 28 of the United States Code,
16 which allows the federal courts to retain jurisdiction of state claims that "are so related
17 to claims in the action within such original jurisdiction that they form part of the same
18 case or controversy under Article III of the United States Constitution." 28 U.S.C. §
19 1367(a). P&F also alleged jurisdiction arising from the Declaratory Judgment Act.
20 Dkt. # 14.

21 On August 10, 2016, the Court dismissed Ms. Calugas's lawsuit against P&F and
22 Mr. Cheung. Dkt. # 48. All that remains to be litigated before this Court is the third-
23 party complaint against Davis.

24 **II. DISCUSSION**

25 The Court may raise the issue of subject matter jurisdiction *sua sponte* at any
26 time during an action. *Allstate Indem. Co. v. Pacheco*, No. 3:14-cv-05366-KLS, 2014
27 U.S. Dist. LEXIS 150069, *11 (W.D. Wash. 2014); Fed. R. Civ. Proc. 12(h)(3) ("If the
court determines at any time that it lacks subject-matter jurisdiction, the court must

1 dismiss the action.”). Absent jurisdiction, any determination on the merits would be
2 void. *Watts v. Pickney*, 752 F.2d 406, 409 (9th Cir. 1985). The Court finds it necessary
3 to raise the issue of subject matter jurisdiction at this stage because the only remaining
4 cause of action is a state law claim and the remaining parties do not allege jurisdiction
5 arising from Section 1332 in Title 28 of the United States Code.

6 P&F states a cause of action for federal declaratory judgment and claims that this
7 Court has jurisdiction as a result. However, a request for declaratory judgment is not
8 enough to sustain a complaint in a federal forum; by definition, the Court may only
9 declare the rights of the interested party under the Declaratory Judgment Act if there is
10 “a case of actual controversy within its jurisdiction” 28 U.S.C. § 2201(a); *see also*
11 *United Nat’l Ins. Co. v. R&D Latex Corp.*, 242 F.3d 1102, 1107 (9th Cir. 2001)
12 (“Subject matter jurisdiction is a necessary predicate to the issuance of a declaratory
13 judgment, so if subject matter jurisdiction over Travelers’ action could not be
14 established, the question whether to exercise discretionary jurisdiction would not
15 arise.”), *ExcelStor Tech., Inc. v. Papst Licensing GmbH & Co. Kg*, No. C 09-2055 PJH,
16 2010 U.S. Dist. LEXIS 62409, *8 (N.D. Cal. 2010) (“The Declaratory Judgment Act
17 creates a federal remedy, but does not provide an independent basis for federal
18 jurisdiction. Before declaratory relief can be granted, federal subject matter jurisdiction
19 requirements must be satisfied. Thus, actions for declaratory relief either must be
20 between parties of diverse citizenship, or must ‘arise under’ federal law.”) (internal
21 citations omitted). P&F’s third-party lawsuit is the only matter remaining in this action
22 and the only cause of action is one arising from state law. Moreover, the parties are not
23 able to claim jurisdiction arising from diversity of citizenship. Therefore, the Court will
24 no longer exercise jurisdiction over this matter.

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1 **III. CONCLUSION**

2 For the foregoing reasons, the Court declines to exercise jurisdiction over this
3 third-party action due to the lack of subject matter jurisdiction. Accordingly, the matter
4 is **DISMISSED** without prejudice.

5 Dated this 24th day of August, 2016.

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10 The Honorable Richard A. Jones
11 United States District Judge
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